

Amendment and Response
U.S. Application Serial No. 09/865,296

REMARKS

Preliminarily, Applicants note that the Examiner has rejected claims 39-40 and 42. It is presumed that the Examiner intended to reject claim 41 instead of claim 42, as claim 41 is similar to claims 39-40. Accordingly, Applicants have amended claim 41 (and not claim 42) based on this presumption. In addition, it is submitted that a proper oath will be submitted upon receipt of a re-executed oath from the inventors.

Claims 15, 17-21, 28-30, 35, 39-40 and 42 were rejected under 35 U.S.C. §112, second paragraph as allegedly being indefinite for failing to distinctly claim the invention. Applicants respectfully request reconsideration and withdrawal of these rejections in light of the above amendments.

Regarding the rejection of claims 17 and 18, the Applicants assert that it would be readily understood by one of ordinary skill in the art that the viscosity limitations as claimed were measured under ambient conditions (nominally 25°C). With respect to claim 36, it is noted that the term "ionic" includes acids, bases, salts, anionic, cationic and zwitterionic surfactants. (See page 5 of the application.)

With respect to the §112 rejection of the claims, Applicants submit that the claims are in full compliance with the requirements of the statute.

With respect to the §102 and §103 rejections of the claims, Grove Turkeys discloses that the emulsion "resembles chewing gum" (page 2, lines 21 and 22) which is clearly not a milk or cream as in the present invention. Furthermore, the emulsifiers specified in Claim 1 are distinct from those discussed in Grove Turkeys.

FMC is directed to the use of konjac as a gelling agent in a shortening substitute for baking. FMC does mention liquid emulsions see Example 7. It is noted that these have a "plastic consistency" (line 27 of Example 7) and are not formed from konjac/Xanthan. FMC discusses that such systems are "good film-former[s]" (page 27, lines 6 and 7), i.e., forms a "firm, elastic gel" (page 24, lines 8 and 9). Thus, there is no disclosure of a milk or cream formed from the polysaccharide combination required in the present claims.

The synergistic effect referred to in FMC (WO) of clarified konjac and clarified Xanthan (and at least 4 other materials) is specifically limited to the production of "clear, thermally reversible gels" (page 8, line 21). The present claims do not cover gels. There is no hint or suggestion of personal care applications in FMC (WO). There would be no incentive (and there is actually a significant disincentive) for the skilled person to employ this

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combination in the specific systems disclosed in ICI, and in any event the result would not be the present invention.

CONCLUSION

Therefore, it is believed that the present application is in condition for allowance and favorable reconsideration and allowance of the application is kindly requested.

Should any issues remain unresolved, the Examiner is encouraged to contact the undersigned attorney for Applicant at the telephone number indicated below in order to expeditiously resolve any remaining issues.

Respectfully submitted,

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APPENDIX: Version of Claims Showing Changes Made

In the Claims:

1. (Twice Amended) A personal care or cosmetic oil-in-water emulsion comprising: at least one oil; water; and an emulsifier stabilizer system composed of
 - (a) an oil emulsifier [for the oil], wherein the emulsifier comprises one or more non-ionic emulsifier(s) selected from the group consisting of alkoxylate emulsifiers, fatty acid esters, ethers, hemi-acetals of polyhydroxylic compounds, acetals of polyhydroxylic compounds, and a fatty acid amide which is N-substituted with the residue of a polyhydroxylic compound, and
 - (b) a polysaccharide combination of a Xanthan polysaccharide and a polyglucomannan polysaccharide which is present from 0.02 to 0.5% by weight of the emulsion.
7. (Amended) The emulsion as claimed in claim [6] 1, wherein the emulsifier comprises one or more alcohol alkoxylates.
8. (Amended) The emulsion as claimed in claim [6] 1, wherein the emulsifier comprises one or more saccharide esters of fatty acids and a sugar, wherein the mono-ester content is at least 60%.
15. (Twice Amended) The emulsion as claimed in claim 14, wherein the emollient oil comprises at least one normally liquid emollient oil selected from the group consisting of mineral oils, paraffin oils, vegetable glyceride oils, animal glyceride oils, synthetic ester oils, synthetic ether oils, silicone oils, fatty alcohol propoxylates, [or] a solid liquefiable emollient fat, [or] a solid liquefiable emollient wax, and mixtures thereof.
19. (Twice Amended) The emulsion as claimed in claim 18 in the form of a cream [which includes] comprising [as a] at least one thickener selected from fatty amphiphiles or synthetic thickeners [one or more fatty amphiphiles and/or one or more polymeric thickeners].
20. (Twice Amended) The emulsion as claimed in claim 1 comprising:
from 1 to 80% by weight of at least one oil;

from 0.02 to 1.2% by weight of at least one alkoxide emulsifier having an HLB of at least 12;

optionally from 0.1 to 1.2% by weight of at least one emulsifier having an HLB of less than 8;

the total amount of emulsifier being from 0.02 to 1.5% by weight;

from 0.02 to 0.5% by weight of at least one polysaccharide stabilizer;

optionally from 0.1 to 10% by weight of at least one thickener selected from fatty amphiphiles or synthetic thickeners;

the remainder being minor components and additives and water.

21. (Twice Amended) The emulsion as claimed in claim 1 comprising:

from 1 to 80% by weight of at least one oil;

from 0.02 to 1.2% by weight of at least one emulsifier having an HLB of at least 12 selected from the group consisting of a fatty acid ester, ether, hemi-acetal or acetal of a polyhydroxylic compound, and a fatty acid amide which is N-substituted with the residue of a polyhydroxylic compound;

optionally from 0.1 to 1.2% by weight of at least one emulsifier having an HLB of less than 8;

the total amount of emulsifier being from 0.02 to 1.5% by weight;

from 0.02 to 0.5% by weight of at least one polysaccharide stabilizer;

optionally from 0.1 to 10% by weight of at least one thickener selected from fatty amphiphiles or synthetic thickeners;

the remainder being minor components and additives and water.

28. (Twice Amended) A dry blend emulsifier stabilizer formulation comprising an oil emulsifier and an oil-in-water emulsion stabilizer which is a polysaccharide combination, wherein the polysaccharide combination consists only of a Xanthan polysaccharide and a polyglucomannan polysaccharide.

29. (Twice Amended) The formulation as claimed in claim 28 further comprising a sugar in addition to the polysaccharide combination.

30. (Twice Amended) The dry blend as claimed in claim 29 comprising;
from 2 to 10 parts by weight of Xanthan;
from 2 to 10 parts by weight of polyglucomannan;
the weight ratio of Xanthan to polyglucomannan being from 1:4 to 4:1;
optionally from 5 to 40 parts by weight of an emulsifier having an HLB of less than 8;
and

optionally from 2 to 10 parts by weight of a milling aid selected from sucrose, fructose, glucose or mixtures thereof [(sugar)].

35. (Amended) A personal care or cosmetic oil-in-water [emulsion] cream having a viscosity of more than 20,000 mPa.s, comprising [additional thickener components and having a viscosity of up to about more than 20,000 mPa.s,] an emulsion [wherein said emulsion comprises an emulsifier stabilizer system composed of] comprising:

a) an oil emulsifier [for the oil] comprising at least one or more non-ionic emulsifier(s) selected from the group consisting of alkoxylate emulsifiers, fatty acid esters, ethers, hemi-acetals of polyhydroxylic compounds, acetals of polyhydroxylic compounds, and a fatty acid amide which is N-substituted with the residue of a polyhydroxylic compound,

b) and a polysaccharide combination of a Xanthan polysaccharide and a polyglucomannan polysaccharide.

36. (Amended) A personal care or cosmetic oil-in-water emulsion comprising an emulsifier stabilizer system composed of an emulsifier for the oil and a polysaccharide combination of a Xanthan polysaccharide and a polyglucomannan polysaccharide, wherein the concentration of ionic materials within the emulsion is not greater than about 0.05 molar.

39. (Amended) The emulsion as claimed in claim [6] 1, wherein the emulsifier comprises at least one [or more] alkoxylate [emulsifiers] emulsifier derived from fatty acid esters.

40. (Amended) The emulsion as claimed in claim [6] 1, wherein the emulsifier comprises at least one [or more] fatty acid [amides] amide [which are] that is N-substituted with the residue of a polyhydroxylic saccharide fatty acid ester.

41. (Amended) The emulsion as claimed in claim 7, wherein the emulsifier comprises at least one [or more] alcohol ethoxylates.

End of Appendix